

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HARRY FRANK JAVINS, JR. and  
ELAINE J. JAVINS, husband and wife,**

## Plaintiffs

**V.**

**WESTFIELD INSURANCE COMPANY,**

## Defendant

**Civil Action No. 2:20-cv-00698**

Honorable

Removed from the Circuit Court  
of Boone County, WV  
(Civil Action No. 03-2020-C-76)

## NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §1441 and §1446, Westfield Insurance Company (“Westfield”), hereby gives notice of the removal of this action from the Circuit Court of Boone County, West Virginia, Civil Action No. 03-2020-C-76, to the United States District Court for the Southern District of West Virginia. In support of this Notice of Removal, Westfield states as follows:

1. Plaintiffs Harry Frank Javins, Jr. and Elaine J. Javins have filed a Complaint in the Circuit Court of Boone County, West Virginia, styled *Harry Frank Javins, Jr. and Elaine J. Javins, Plaintiffs v. Westfield Insurance Company, Defendant*, Civil Action No. 03-2020-C-76.

2. Copies of the Summons and Plaintiffs' Complaint were served on Defendant Westfield via the West Virginia Secretary of State's Office on September 22, 2020.

### Diversity Jurisdiction

3. 28 U.S.C. §1441 allows Westfield to remove a civil action from state court to federal court if (i) the amount in controversy meets or exceeds Seventy-Five Thousand Dollars (\$75,000.00) and (ii) the civil action involves a controversy between citizens of different states.

**Amount in Controversy**

4. To support removal, Westfield must establish, by a preponderance of the evidence, that “the sum demanded in good faith in the initial pleading” meets or exceeds the jurisdictional threshold of Seventy-Five Thousand Dollars (\$75,000.00). 28 U.S.C. §1446(c)(2)

5. The amount in controversy in this action exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, inasmuch as the Plaintiffs have asserted claims against Westfield seeking recovery of insurance benefits in connection with a fire loss which occurred on or about May 23, 2019, and the Plaintiffs claim entitlement to insurance benefits in the amount of an additional \$130,000 for the fire loss to their dwelling (See the Plaintiffs’ *Complaint*, at Paragraph 11), and for additional personal property damage in the amount of \$61,872.07 (See the Plaintiffs’ *Complaint* at Paragraph 17).

6. In addition, the Plaintiffs have asserted claims against Westfield for breach of contract (Count I), bad faith (Count II) and unfair claims settlement practices (Count III).

7. Finally, the Plaintiffs’ *Complaint* also includes a demand for punitive damages in an unspecified amount.

8. The Plaintiffs, therefore, seek recovery from Westfield for sums substantially exceeding Seventy-Five Thousand Dollars (\$75,000.00) as a result of the fire loss to the Plaintiffs’ property.

**Citizenship**

9. Along with establishing the amount in controversy, Westfield must prove diversity of citizenship. 28 U.S.C. §§1332(a)(1); 1441.

10. At all times relevant to the removal of this action:

- a. Plaintiffs Harry Frank Javins, Jr. and Elaine J. Javins are, and have been residents of Boone County, West Virginia. (See the Plaintiffs' *Complaint*, at Paragraph 1).
- b. Westfield is, and has been an Ohio corporation, with its principal place of business in the State of Ohio. (See the Plaintiffs' *Complaint*, at Paragraph 3).

11. There is complete diversity of citizenship as between the Plaintiffs and Defendant Westfield.

**Compliance with 28 U.S.C. §1446**

12. This action is being removed within thirty (30) days following service of Plaintiffs' Complaint on Westfield.

13. Copies of the Docket Sheet for the Plaintiffs' action in the Circuit Court of Boone County, West Virginia, and the entirety of the papers filed in the Circuit Court action to date, are attached as **Exhibit A**.

14. Concurrent with filing this Notice of Removal, Westfield has transmitted a copy of this Notice to the Circuit Clerk of Boone County, West Virginia, thereby providing notice to the Circuit Court of the removal of this action to this Court.

**WHEREFORE**, Westfield Insurance Company respectfully requests that this case proceed before this Court as an action properly removed from the Circuit Court of Boone County, West Virginia.

**WESTFIELD INSURANCE COMPANY**  
**By counsel,**

/s/ Brent K. Kesner

Brent K. Kesner (WVSB #2022)  
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**CERTIFICATE OF SERVICE**

I, Brent K. Kesner, counsel for **WESTFIELD INSURANCE COMPANY**, do hereby certify that on the **21<sup>st</sup> day of October, 2020**, I filed the **NOTICE OF REMOVAL** with the Court using the ECF system, and by depositing a true copy thereof in the regular United States Mail, first-class postage prepaid, addressed as follows:

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Justin J. Selep, Esq.  
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*Counsel for Plaintiffs*

*/s/ Brent K. Kesner*

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